SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1968

No. 1315

JOHN S. GRIFFITH, *et al.*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Respondents.

On Appeal to the California Court of Appeal, Second Appellate District, Division Two.

PETITION FOR WRIT OF CERTIORARI.

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PETITION FOR WRIT OF CERTIORARI.

To the Chief Justices and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of a Court of Appeal of the State of California, Second Appellate District, Division Two entered in the above-entitled case.

Citation to Opinions Below.

This case is recorded in 267 A.C.A. 944. It is set forth in Appendix A hereto, *infra*. The opinion of the trial court delivered from the bench commences at page 67 of the Reporter's Transcript certified herewith and the pertinent portion is set forth herein in Appendix B *infra*.

A petition for rehearing in the Court of Appeal was filed in timely manner and denied by the court on January 3, 1969 (order of court certified on March 27, 1969 in certified transcript.) A petition for hearing by the Supreme Court was denied on January 29, 1969 and the order of denial is recorded in the minutes of the Supreme Court for that date in 70 A.C.A. 6 (p. 3 minutes January 29, 1969).

Jurisdiction.

The date of the judgment of the Court of Appeal was December 4, 1968. A timely petition for hearing in the Supreme Court of the State of California was denied on January 29, 1969. A petition for rehearing in the District Court of Appeal was denied on January 3, 1969.

The jurisdiction of this court is invoked under the provisions of 28 U.S.C. §1257(3) (1948) in that the Board of Supervisors of the County of Los Angeles, sitting as a Board of Equalization, so conducted the hearing on the applications of the Petitioners for assessment reductions, as to deny the Petitioners of the due process of law and equal protection of the laws contained in the Fourteenth Amendment of the United States Constitution.

Questions Presented.

Were the Petitioners denied procedural due process or the equal protection of the laws in the following respects:

1. By the appellate court in making the presumption of validity of the act of a public official conclusive.

2. By refusal of the local board of equalization to take official notice of, and the exclusion of, the pub-

lished ratio studies of the State Board of Equalization for the two years immediately preceding the hearing, which studies were offered for the purpose of determining the prevailing ratio of assessed to fair market value within the taxing jurisdiction on the lien date and for the purpose of cross-examining the assessor with respect to his bald generalization pertaining to ratio.

3. By the determination of the appellate court that the administrative body was free to disregard the only substantial evidence in the record relating to market value.

Statutes Involved.

United States Constitution, Amendment Fourteen, Section 1, Clauses 3 and 4

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the law."

California Statutes in 1962 provided:

California Constitution, Article XIII, Section 12, a portion of which provides as follows:

> "All property subject to taxation shall be assessed for taxation at its full cash value."

The first sentence of California Constitution, Article XIII, Section 1, which provides:

> "All property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided."

Revenue and Taxation Code §401,

"Except as provided in this part, all taxable property shall be assessed at its full cash value."

Revenue and Taxation Code Section 1815,

"To enable the board to perform its duties under this article and Sections 9 and 14 of Article XIII of the State Constitution, the board shall make a survey, no less often then triennially, in each county to determine the total full cash value of all locally assessable tangible property as of the lien date for the last equalized roll. As a basis for this determination the board shall ascertain the full cash value of a sample of locally assessable tangible property sufficient in size and dispersion to insure an adequate representation therein of the several classes of property throughout the county. The board shall for such purposes have access by its duly authorized representatives to all records, public or otherwise, of any county assessor."

Revenue and Taxation Code §1817,

"The board shall annually estimate any change that may have occurred in the full cash value of locally assessable tangible property between the lien date of the roll for which the last survey was made pursuant to Section 1815 and the lien date of the current roll. The board shall use as the basis for such estimate date on school enrollment, retail sales, wages, or other factors reasonably indicative of change or lack of change in the total full cash value of the property. The relationship between the total assessed value of the tangible property on

the current local roll and the total full cash value of locally assessable tangible property so estimated shall be computed for each county of the State by the third Monday in July of each year. The board shall transmit promptly to each county assessor a statement of its determination relating to his county."

Revenue and Taxation Code §1818,

"The Board shall each year prepare tabulations showing for each county the ratio of assessed to full cash value of locally assessable tangible property. The tabulations shall show, in such a way as to prevent identification of individual parcels, the ratio of assessed to full cash value of each parcel of such tangible property in the sample of any survey in the County made in the last year pursuant to §1815. The tabulation shall also show the derivation of the total full cash value of the locally assessable tangible property on the current roll from the total full cash value of the locally assessable tangible property on the roll of the prior year pursuant to §1817. *All such tabulations shall be open to inspection by all persons interested.*" (Emphasis added)

Revenue and Taxation Code §1819,

"As soon as tabulations have been made pursuant to Section 1818, but not later than August 1, the Board shall give the Assessor of each county a reasonable opportunity to examine and discuss with it that portion of the tabulations affecting property in his county. After making any adjust-

ment it deems appropriate as the result of such discussion, but not later than September 2, it shall make available for public inspection all such tabulations and shall publish the ratio of assessed to full cash value of locally assessable tangible property for each county."

California Administrative Code Title 18, Chapter 2, Subchapter 7 relating to intercounty equalization, Section 2703:

"Between the date the notice is given pursuant to the regulation 2702 and September 1, tabulations pertaining to the county are open to and available for inspection during regular business hours at the office of the board in Sacramento, by the county assessor, any deputy assessor designated by him, *any official or employee of the county designated by the board of supervisors* and *any official or employee of a taxing agency within the county designated by its governing body.*" (Emphasis added)

Revenue and Taxation Code Section 405:

"Annually, the Assessor shall assess all the taxable property in the county, except stated as property, to the persons owning, claiming, possessing, or controlling it at twelve o'clock meridian of the first Monday in March. The Assessor shall ascertain such property between the first Monday in March and July."

Revenue and Taxation Code Section 616, first paragraph thereof:

"On or before the first Monday in July, annually, the Assessor shall complete the local roll."

Revenue and Taxation Code Section 1602:

"Until the equalization is finished, the local roll shall remain in the Clerk's office for the inspection of all persons interested."

Revenue and Taxation Code Section 1603:

"Annually, on the first Monday in July, the Board of Supervisors shall meet as the County Board of Equalization to equalize the assessment of property on the local roll. It shall continue in session for that purpose, from time to time, until the business of equalization has been disposed of, but not later than the third Monday in July."

Revenue and Taxation Code Section 1605:

"After giving notice prescribed by its rules, the County Board may increase or lower any assessment on the local roll in order to equalize the assessment of property on the local roll."

California Constitution, Article XIII, Section 9:

"A State Board of Equalization, consisting of one member from each congressional district . . . whose duty it shall be to equalize the valuation of the taxable property in the several counties of the state for purposes of taxation . . . the boards of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county board may prescribe, as to

the county assessments, and under such rules of notice as the board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; . . ."

Section from Government Code Section 15606:

"The State Board of Equalization shall:

* * *

"(e) Prepare and issue instructions to assessors designed to promote uniformity throughout the State and its local taxing jurisdictions in the assessment of property for the purpose of taxation. It may adapt such instructions to varying local circumstances and to differences in the character and conditions of property subject to taxation as in its judgment is necessary to attain such uniformity."

Government Code Section 15607:

"The board shall summon assessors to meet with it or its duly authorized representatives at least once annually, at places within the State it designates, to study or discuss problems of administration of assessment and taxation laws and to promote uniformity of procedure in tax matters throughout the State."

Government Code Section 15640:

"The State Board of Equalization shall make surveys in each county and city and county to determine the adequacy of the procedures and prac-

tices employed by the county assessor in the valuation of property for the purposes of taxation and in the performance generally of the duties enjoined upon him by law."

Revenue and Taxation Code §646:

"The records of the Assessor are at all times during office hours open to the inspection of any person charged with the duty of assessing property in the county for any taxing agency."

Revenue and Taxation Code §1609:

"On the hearing of the application, the County Board may subpena witnesses and take evidence in relation to the inquiry."

Revenue and Taxation Code §1610:

"During the session of the County Board, the Assessor and any deputy whose testimony is needed shall be present and may make any statement or produce evidence on matters before the County Board."

Revenue and Taxation Code §407:

"Annually, on the second Monday in July, the Assessor shall transmit a statistical statement to the Board, supplying any statistical information which the Board may require, and shall supply from time to time any other information required by the Board."

Revenue and Taxation Code §408:

"(a) Except as otherwise provided in subdivision (b) any information and records in the assessor's office which are not required by law to be

kept or prepared by the assessor are not public documents and shall not be open to public inspection.

"(b) The assessor shall permit an assessee of property to inspect at the assessor's office any information and records, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of his property, except information and records which also relate to property or business affairs of a person other than the assessee."

Statement of the Case.

This case involves the third year of hearings following the adoption of Section 1815 *et seq.* of the California Revenue and Taxation Code relating to publication of county-wide ratio studies to enable the State Board of Equalization to perform its duties and involves the tax year 1962-1963. In this case seven shopping center owners are involved. During their appearances before the local board of equalization the petitioners again attempted to have the board compel the assessor to disclose the tabulations of ratio for 1962-1963 for Los Angeles County prepared by the state board pursuant to Revenue and Taxation Code Section 1818 in his possession at the time of the hearing. Petitioners had also requested that the board take official notice of the published ratios for the tax years 1960 and 1961 and admit into evidence copies of the publications of the State Board setting forth the ratios with respect to the County of Los Angeles and the state-wide average ratio. As in prior years the local board had refused to take official notice, had refused to

compel disclosure of state board determinations for the 1962-1963 tax year (notwithstanding the addition of Section (b) to Revenue and Taxation Code Section 408), had refused to admit into evidence the published ratio studies for 1960-1961 and 1961-1962, and made no findings of any kind. Unlike the preceding cases for tax years 1960-1961 and 1961-1962, the trial court ruled for Petitioners. He did so, however, on the sole basis of the failure of the Board of Equalization to take official notice of the published ratios for the year 1960-1961 and 1961-1962 and on the basis of the failure of the Board to permit the evidence of said ratios to be placed in the record. He distinguished the prior cases on the ground that there was a better foundation in that the assessor had testified that he was assessing at the same ratio in 1962 as he had in 1960 and 1961 and that he had testified that he had not objected to the State Board determination of ratios for those prior years and did not intend to object to its ratio determination for 1962. The ratios for 1961 and 1962 were respectively 23.3% and 24.4% for Los Angeles County. The tentative tabulations of the state board for 1962-1963 would have disclosed a ratio of 24.6% for Los Angeles County.

The petitioners had appeared before the Los Angeles County Board of Equalization commencing July 19, 1962. The market value testimony of their expert witness was obtained in an affidavit by reason of the fact that he could not be present on the date set for the hearing although he was present for cross-examination by the counsel for the county on July 27, 1962. Again, the total time involved did not exceed 3 hours and again as in the prior years the assessor introduced absolutely no

testimony relating to his determination of the market value of the subject properties. The only support for his equivocal 50% ratio testimony was the assessor's *ipse dixit*. There was also introduced into the record the Joint Report of the Assessor's Committee on Equalization Procedure and the State Board of Equalization dated October 1, 1956 signed by the assessor of the County of Los Angeles setting forth the basis of the State Board's method to make ratio determinations used at the time of the hearing and concluding that it was a desirable method. The assessor denied that he had signed it, but clearly it was signed with his knowledge and bears his signature. A copy is contained in Appendix A of the respondent's brief, which is a part of the certified transcript supplied herein.

The trial court stated in its opinion that it was bound by prior appellate court decisions relating to the matter of the admissibility of the tentative tabulations in the possession of the assessor for the tax year in question. However, it concluded that based upon the testimony of the assessor that he was using the same ratio in 1962 as he had in 1960 and 1961, it would not be proper to exclude the prior year's published ratio studies on the grounds of irrelevancy which served as the basis of the appellate court ruling by which he felt bound for prior years. He further concluded that the objection relating to statistical inadequacy of the studies went merely to the weight and not to the admissibility of the evidence in that the findings were those of the state agency made expressly under the direction of the legislature and that the burden was on the county to show the examples were inadequate. Furthermore, the court noted that the assessor equivocated throughout the record, was

as evasive as a witness could possibly be in that respect and that his testimony involved a fundamental unwillingness to answer questions in a forthright manner. The trial court then entered judgment for the petitioners herein remanding the matter to the Los Angeles County Board of Equalization and retaining jurisdiction of them for the ultimate disposition with respect to court costs and other questions.

The appellate court again reiterated that its review was limited to a determination of whether or not the Board's action was founded on substantial evidence and whether the Board's ruling denied due process. It concluded, however, in order to justify its decision, that the petitioners had not been hurt with respect to the exclusion of ratio evidence because it had been stipulated that the assessor was testifying that he was in fact applying a 50% ratio within the County and that therefore the Board of Equalization could have relied upon his testimony. It also concluded that in any event such testimony from prior years was irrelevant because what the petitioners were really seeking to do was to show that the county ratio was different from that determined by the State Board of Equalization and that so long as the assessments were "equalized" in the county as a whole, it would make no difference whether there was a discrepancy between the county ratio and the state determined ratio. In arriving at this conclusion, the court did not consider at all the history of the adoption of statutes commencing with Revenue and Taxation Code §1815, the requirement that assessors assess at the statewide average ratio as determined by the State Board of Equalization, and the use of the State Board ratio determinations within the

County, although these matters had been exhaustively briefed. In order to further buttress its conclusion, it held that the only way the prior publication of the ratio studies for the tax years 1960 and 1961 could become meaningful with respect to 1962, was for the petitioners to introduce evidence of the total fair market value of all taxable property in the County in 1962. Since the respondents tendered no such evidence, it concluded that the Board of Equalization was within its powers when it concluded that the burden of proof of the petitioners had not been sustained. In arriving at this last conclusion it did not consider or discuss the wording of Sections 1815, 1817 and 1818 of the California Revenue and Taxation Code.

Finally, the appellate court held that the presumption of fairness and regularity became substantial evidence itself under the California rules of evidence relating to courtroom trials. Since the Board could have found against the taxpayers in any event, Petitioners could not complain that the action of the Board was prejudicial so long as the presumption of itself was evidence. In effect, in view of the substantial evidence rule on review of administrative hearings, under the holding of the court such presumption becomes conclusive. It is also implied by the court that the testimony of the expert witness of the petitioners could have been rejected by the Board because (1) the fair market value would have been different if the rent were substantially lowered and (2) the Board would not be bound by the uncontradicted valuation testimony.

When the matter was argued it had been heard by Justices Herndon, Roth and Nutter, who also had heard the argument in connection with the tax years 1960 and 1961. The opinion, however, was not signed by Justice Herndon, it was signed by Justice Fleming, who at no time had heard the argument or had read the briefs and who was not stipulated to have the right to render an opinion in the absence of hearing the argument. Justice Herndon, however, wrote the opinion in the case of *County of Los Angeles v. Tax Appeals Board No. 2*, 267 A.C.A. 935, 940-941, 73 Cal. Rptr. 469, one day before the date of the opinion herein. In affirming the opinion of the Superior Court Judge, who also wrote the appellate opinion in the case at bar, the same court of appeal held that there must be substantial evidence in the light of the whole record to sustain the finding of the local board of equalization. It also held in effect that very, very rough approximations or very general statements constitute evidence sufficient to meet the taxpayers burden in hearings before Boards of Equalization concerned with matters identical to those in which the petitioners were involved, indicating in such opinion that the owner's opinion of value without more would be accepted by the local quasi-judicial adminstrative board as substantial evidence. The opinion is set forth in Appendix C.

REASONS FOR GRANTING THE WRIT.

To Adopt the Ruling of the Appellate Court Herein Is to Condone the Long Continued Lawless Enforcement of the Law by California Assessors and to Affirm the Lack of an Effective Remedy for California Taxpayers Who Assert Improper Valuation or Discrimination.

By reason of the statutes and practice of the local board, the hearing could not be had after the date of publication of the State Board of Equalization ratios for the year in question. The California appellate courts have ruled that published ratios for immediately prior years were not admissible, and that the showing of a discrepancy of assessed valuation of adjoining similar property is not sufficient evidence of the county-wide ratio. The commentators in all of the law journals and the Advisory Committee to the President and virtually all objective writers on this subject indicate that the State Board studies, particularly those of California, should be used to show the prevailing ratio within the community. However, the burden of the taxpayer to show the prevailing ratio in the year 1962-1963 was virtually impossible by reason of the rulings of the California appellate courts. See Klein, The Ratio Becomes Rational, 41 State Bar Journal, 662-668; Carr Property Assessments, 39 State Bar Journal, 887; Carr Need for Disclosure in Property Tax Proceedings, 40 State Bar Journal, 794. *Web Service Co. v. County of Los Angeles,* 242 Cal. App. 2d 1, 6, 51 Cal. Rptr. 753 (1966). If no effective remedy exists for taxpayers, the quality of assessment administration must necessarily diminish and thereby effect Federal-State relationships. See, Advisory Commission on Intergovernmental Re-

lations, The Role of the States in Strengthening the Property Tax, Vols. I and II (1963).

It is also necessary that this court intervene in a county such as Los Angeles County which has over 7 million people to compel the County Board of Supervisors and all taxing officials to be aware of the mandate of the law. Thus, the California legislature expressly adopted on June 12, 1968 an amendment to the Revenue and Taxation Code Section 1609.2 in conformance with what were the general rules relating to administrative hearings, but which again in tax matters had been ignored by the California courts. That statute provided expressly that the hearing need not be conducted according to technical rules relating to evidence and that any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objections in civil actions. It became effective on November 13, 1968. Notwithstanding this statute, the Los Angeles County Board of Supervisors adopted Rules for the conduct of the Board of Equalization within Los Angeles County, effective December 31, 1968, which expressly provided that the formal courtroom law of rules of evidence applied, particularly those used in eminent domain cases.

Furthermore, if the courts are free to disregard at their whim what they would consider to be substantial evidence were it introduced by the assessor in order to justify a tortured decision and if they can be permitted to make a rebuttable presumption in substance conclusive and to thereby deny to petitioners a true hearing, then

there is no longer any rule of law. The presumption that official duty has been performed upon which the court relies is contained in the section under "Disputable Presumptions." California Code of Civil Procedure 1963 (15). The decision of the appellate court here is tantamount to saying that although a convicted felon has committed acts which were disclosed through illegal search and seizure or by way of a confession extracted without giving him the cautionary instructions relating to his right to have counsel, that nevertheless since the jury found the facts to be true, and they are true, he cannot complain. The suppression of the ratios in the possession of the assessor amounts to an act of the State calculated to keep the best evidence used in matters literally effecting the disbursement of billions of dollars within California from being used to determine the fundamental question of the basis of assessed value which should be applied to market value determinations. if the system is to work, then it is essential that there be honest, fair and efficient assessment of property taxes for the citizens not only of California but of all other states.

The history of the ratio determinations and publications is illustrated by the 1967-1968 Annual Report of the California State Board of Equalization commencing at page 9 thereof substantially as follows:

> There is more state involvement in California in connection with property taxation than in many jurisdictions. It arises out of the concern of the legislature that the laws be uniformly administered. In the early years of California, state government relied heavily on property taxes to supply revenue. Since local officials made all assessments

until 1879 and all except certain railroad assessments thereafter, it was important that each county assess at approximately the same percentage of full value. The State Board of Equalization was created in 1879 because of this need. Its primary duty consisted of adjusting local assessment rules to uniform levels so that each taxpayer would be equally treated for state tax purposes. In 1911 this was changed after the adoption of a constitutional amendment involving separate sources of state taxes and local taxes. Most important new state taxes involved gross receipt levies on the major utility groups, whose operating properties were then relieved of local ad valorem taxes. The Board was given responsibility for administration of the taxes that were substituted for the state's previous share of general property tax. However, in 1933 the property tax was no longer able to support the growing cost of education and other government functions. Accordingly, the California legislature adopted the so-called Riley-Stewart Act, which among other things adopted the general retail sales tax. The plan also provided for the assessment of the properties of most public utilities by the State Board of Equalization and the subjection of such property to local general property taxes instead of state gross receipt taxes. The Board then resumed its activities in the property tax field through a newly found 'Valuation Division.' When the sales tax generated substantial sums of money which flowed into the general fund these revenues provided the means of generous financial aid to local school districts. While earlier grants

were simply multiples of average daily school attendance, post-war grants included increasing amounts of equalization paid which varied inversely with the abilities of school districts to finance their needs out of locally imposed property taxes. *It was thus clear that, unless all assessors used substantially the same concept of market value and the same percentage of market value for their assessed value, this equalization aid would be misallocated.* The legislature, in order to avoid the frustration of the school aid law, provided the State Board of Equalization with the budget needed to renew the intercounty equalization activities revived in 1935, but which had lapsed two years later. Each county's assessment roll was 'sampled,' appraisal of the properties in the sample were made to estimate the ratio of the total assessed value to the total market value of locally assessable property on the 1955 lien date. This function, with refinements adopted in 1956, was subsequently spelled out in the Revenue and Taxation Code following the hearings of the Joint Interim Committee on Assessment Practices of California Legislature in 1959 and has been continually followed by the State Board.

In 1955 the State Board compelled the wholesale raise of assessment levels in some 14 counties. State of California, *Annual Report of the State Board of Equalization* for 1954-55, page 5. Litigation resulted and only in one case, where a fair hearing was not given the County, was the assessment level not raised. *People v. County of Tulare,* 45 Cal. 2d 317, 289 P. 2d 11 (1955). *McDougall v. County of Marin,* 208 Cal. App. 2d 65, 67; 25 Cal. Rptr. 107 (1962). In fact, the State Board

conducted a survey of the local county assessment administration practice since 1947 and in 1955 it established in statewide average ratio tolerance zones centered around 25% of market value. The county assessment ratios determined by the State Board of Equalization are used to modify locally assessable valuations that determine state equalization aid, supplemental equalization aid and transportation aid to school districts which now aggregate nearly a half-billion dollars a year in California, repayment of state loans to school districts for capital investments, school district debt limits, the tax rates of certain intercounty taxing districts and per capita state grants for county and city libraries. The ratios are also used to determine whether the county must provided equalization aid to school districts, a requirement whenever a county's average assessment ratio persistently falls below the statewide average and one or more districts are eligible for equalization aid. For a general discussion in connection with the duty of the State Board to maintain assessment ratios in all California Counties at the same level see the dissent of Justice Traynor in *People v. County of Tulare, supra,* 321, 322. *McDougall v. County of Marin, supra,* 70-72 expressly held that the power to compel the counties to assess at a uniform ratio existed in the State Board by virtue of Article XIII, Section 9 of the California Constitution.

The attitude of the local assessors is not limited, however, to the local boards of equalization, for the State Board of Equalization subsequent to 1955, knew that it was no longer assessing public utilities at 50% of the full value, although it had announced that it in fact was so doing. It had determined that the ratios

ranged between 20% and 30% of full cash value. This was confirmed in the Joint Interim Committee Report, *supra,* and the Board of Equalization, because it feared that continued announcement of this ratio used by it for utilities would have led to the pursuit by state assessed utility taxpayers of litigation on file, determined in 1959 to forego the announcement of the assessment ratios. California State Board of Equalization, 1967-1968 Annual Report, pp. 15-16.

In validating the use of fractional assessments, the appellate district of the court of appeal to which this petition is directed through the very division which wrote the opinion in *Web Service Co. v. County of Los Angeles,* 242 Cal. 2d 1, 51 Cal. Rptr. 753 (1966), found that prevailing ratios of assessed to fair market value averaged in California for the years 1960-1961, 1961-1962, and 1962-1963, 22.6, 23.5 and 23.8% of true value respectively. See *Hanks v. State Board of Equalization,* 229 Cal. App. 2d 427, 428, 40 Cal. Rptr. 478 (1964).

The same division, in *A. F. Gilmore Co. v. County of Los Angeles,* 186 Cal. App. 2d 471, 9 Cal. Rptr. 67 (1960), stated in substance that the opinion testimony of both experts in that case constituted substantial evidence. That court further held that the term "substantial evidence" should be construed to confer finality upon an administrative decision on the facts when, upon an examination of the entire record, the evidence, including the inferences therefrom, is found to be such that a reasonable man acting reasonably might have reached the decision, but on the other hand, if a reasonable man acting reasonably could not have reached the decision from the evidence and its inferences, then

the decision is not supported by substantial evidence and should be set aside. The California courts have long equated "full cash value" with "fair market value." *County of Sacramento v. Hickman,* 66 Cal. 2d 841, 846, 428 P. 2d 593 (1967). In the present case, the annual publications of the California State Board of Equalization since 1955, including the tax year in question, had shown that the ratio did not exceed 25% of full cash value in Los Angeles County. The expert witness testifying for the petitioners had valued over 125 shopping centers. He set forth in great detail his value conclusions and the basis for such opinions, including the stabilized net operating income before depreciation and interest deductions and the capitalization rates applicable thereto. In the preceding year, his testimony had been admitted after he was required to qualify as an expert over the objection of the county counsel. His affidavit was accepted as evidence by the Board of Equalization in the present hearing. It had been the third year that this expert had testified before that Board. Admittedly, no market value testimony whatsoever was introduced by the assessor and in fact it is clear from the testimony of the record that all the assessor was doing was comparing the assessed valuation of one parcel of property with assessed valuation of another. The assessor introduced absolutely no evidence of capitalization rates of, net operating income, of replacement costs of sales, or of any other matters that might be considered by the trier of fact in considering the market value of the property of the Petitioners. In short, if *County of Los Angeles v. Tax Appeals Board No. 2 supra,* was properly decided there is no substantial market value evidence from the assessor in the present case upon which the local board could have relied.

The method of capitalizing net operating income to arrive at market value is a generally accepted method of valuation in California. *California Portland Cement Co. v. State Board of Equalization,* 67 Cal. 2d 578, 583-585, 432 P. 2d 700 (1967). Specifically, in connection with shopping centers, the highest courts of other jurisdictions have approved valuations by the taxpayer based solely upon capitalization of net operating income. Appeal of *Pennsylvania Northern Lights Shoppers City Inc.* (Pa. 1963) 25 Beaver County Legal Journal 18, affirmed (1965 Penn. Sup. Ct.), 419 Pa. 31, 213 A. 2d 268; *Mid Island Shopping Plaza Inc. v. Podeyn,* 204 N.Y.S. 2d 11 (1960), affirmed 218 N.Y.S. 2d 249, affirmed 224 N.Y.S. 2d 283, 180 N.E. 2d 63 (1961). The Board of Tax Appeals of the State of Ohio has followed the procedure which was attempted by the petitioners herein. *Southland Stores No. 3, Inc. et al., Appellant v. Cuyahoga, County Board of Revision, Appellee,* Case No. 66115, 66116 and 66117 (August 6, 1968).

In other jurisdictions, studies made of ratio by state agencies have been held to be admissible and to establish the ratio between the full fair cash value and the assessed value. *People v. Gulf, Mobile and Ohio Railroad Co.,* 28 Ill. 2d 605, 195 N.E. 2d 174 (1963); *People v. Chicago and Northwest Railway Co.,* 28 Ill. 2d 205, 195 N.E. 2d 780 (1963); *In re Appeals of Kent,* 34 N.J. 21, 166 A. 2d 763 (1961). See also *Mid Island Shopping Center Inc. v. Podeyn, supra.* In Ohio it is reversible error not to admit into evidence the assessment ratio studies of the State Board of Tax Appeals. *Frederick Building Co. v. State Board of Revision,* 5 Ohio St. 2d 220, 215 N.E. 2d 388 (1966).

The court did not at all discuss and apparently does not consider the cases cited to it in connection with the method of capitalizing the leasehold income which has been expressly approved by the California courts. There was no testimony in the record that the rental paid by the tenants was so favorable that there existed a bonus value. See *Central Manufacturing District, Inc. v. State Board of Equalization,* 214 Cal. 288, 293-294, 5 P. 2d 424 (1931). A case cited to the court and not discussed by it had just been decided and had held expressly that an expert could consider the effect of a specific lease on the value of property. *People ex rel. Dept. of Public Works v. Lynbar, Inc.,* 253 Cal. App. 2d 870, 61 Cal. Rptr. 903 (1967). The court noted in footnote 12 of the *Lynbar* case that it is generally recognized that a lease favorable in rent to the landlord enhances, not only the market value of his interest in the fee, but also the market value of the fee itself.

The case which the district court cites for its conclusion that the expert's opinion need not be accepted even though uncontradicted, holds nevertheless, such testimony is substantial evidence. *Hemmerling v. Tomley Inc.,* 67 Cal. 2d 572, 577, 432 P. 2d 697 (1967). Here, the State Board of Equalization published studies were being sought to be admitted in evidence. There had been no cross-examination of Mr. Glass at the time petitioners sought to introduce the ratio studies and his testimony stood in the record alone uncontradicted and unimpeached. Therefore, a reasonable man acting reasonably could have relied upon such testimony as evidence of market value of the petitioners' property. The State Board's ratio determinations then could have been relied

upon in turn under the *Gilmore* case by that same reasonable man as evidence of the ratio prevailing generally within the County of Los Angeles on the lien date and could have applied to such market value determination, so far as the prior years' ratio determination. In *Leach Corp. v. County of Los Angeles,* 228 Cal. App. 2d 634, 641, 39 Cal. Rptr. 654 (1964), the unsubstantiated ratio testimony of the assessor, directly in conflict with all of the State Board findings over the years and with the findings of the legislature that 50% ratio testimony is not entitled to credibility, and with the reliance of the appellate courts upon ratios substantially lesser in amount, was nevertheless held to be substantial evidence in the face of a conflict. See also *City of Los Angeles v. County of Mono,* 51 Cal. 2d 843, 851-582; 337 P. 2d 465 (1959). In *A. F. Gilmore Co., supra,* one expert witness relied upon an agreement made seven years before the valuation date and the condemnation award made four years before the valuation date. In *County of Los Angeles v. Assessment Appeals Board No. 2, supra,* owner's opinion of value without more would be accepted substantial evidence. In *Rancho Santa Margarita v. San Diego County,* 135 Cal. App. 134, 142-143; 26 P. 2d 716 (1935) evidence comprised of the transcript of the proceeding year's hearing was held to be substantial evidence for the purpose of market value determination in a subsequent year. In any event, without the findings, the matter was not ripe for decision. *County of Amador v. State Board of Equalization,* 240 Cal. App. 2d 205, 49 Cal. Rptr. 448 (1966).

Conclusion.

The very essence of a "hearing" requires as an essential to it that a person shall have the right to support his allegations by proof, however, informal and by argument, however brief (1 Davis Administrative Law, Sec. 701, p. 407). In such adjudicative hearings as before a Board of Equalization the essence of justice is largely procedural and it is procedure which tells the difference between the rule of law and the rule by whim or caprice which gives rise to frustration of the legislative will and which causes the problems in which many of the local jurisdictions administering property taxes now find themselves. If the petitioners are required to present to the administrative agencies their full case, as is California law, they should not be denied the right to obtain from the agency certain key evidence of ratio in the possession of the agency or at least to introduce evidence which would tend to counteract the broad general statements of the assessor, unsupported in years of studies, with respect to the ratio which he is using.

Since the assessor is by law required to make an assessment of the property each year (Revenue and Taxation Code Section 405), and need not complete the assessment until July 1 (Revenue and Taxation Code Section 616) at which time equalization commenced (Revenue and Taxation Code Section 1603), the only reliable survey of ratios within such restricted period must necessarily be that of the State Board. To offer something less than proof of the assessment ratio of the entire county was of no use. *Best v. County of Los Angeles*, 228 Cal. 2d 655, 657 Cal. Rptr. 665 (1964).

Under such circumstances for the court to say that the petitioners would have to demonstrate that there had been no change in market value for the whole Los Angeles County from a preceding year in order to use the ratio determinations from that year at the subsequent year's hearings is simply to deny any method of proof to the petitioners. Such statement would indicate that the Court had not read Sections 1817 and 1818 of the Revenue and Taxation Code, for under those Sections the Board was required to estimate the change in market value for all local assessable property in the County between the lien date of the last survey under 1815 and that of its current roll and the derivation of total market value of such property from year to year. Furthermore, when the statutes are read commencing with Article XIII, Section 9 of the California Constitution, if intercounty equalization is to be meaningful, great probative validity must be given to the studies of the California Board of Equalization. The entire statutory scheme of ratio determinations in California trends forward for three year periods the market values used for the original ratio determinations (Revenue and Taxation Code Section 1815), *i.e.,* an actual appraisal is made triennially. See Joint Report of Assessors Committee on Equalization Procedures and the State Board of Equalization, Appendix "A", pp. 6-8, Respondents' Brief in No. 31826.

This Court is not unfamiliar with the problems of property taxpayers, *e.g. Sioux City Bridge Co. v. Dakota County,* 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340 (1923); *Township of Hillsborough v. Cromwell,* 326 U.S. 620, 66 S. Ct. 445, 90 L. Ed. 358 (1946). It has

stated that a commission reporting its conclusion but not the underlying proof in refusing to disclose documents denies the petitioner of fair hearing required by due process. *Ohio Bell Telephone v. Commission,* 301 U.S. 292, 300-303 (1937).

The petitioners here ask very little. They ask to be remanded to the Board of Equalization of the County of Los Angeles for a hearing, as the Superior Court Judge who tried this matter determined, after having heard the 1960 and 1961 matters. Such action will not destroy the tax base of the jurisdiction nor harm it in any fashion. If anything, it will assure that the system will work and maintain its viability. Otherwise, notwithstanding the reforms of the California legislature the holding which permits the Board of Equalization to freely disregard unimpeached and uncontradicted evidence in the record of an administrative hearing, particularly on those counties where Boards of Supervisors still constitute such Boards of Equalization, is tantamount to frustrating the entire legislative mandate. It is respectively submitted that due process requires more than that which was granted to the petitioners by the Board of Equalization and by the appellate courts of California.

Respectfully submitted,

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